Office of Legislative Legal Services

- Non-partisan, in-house counsel for the Colorado state legislature.

- Writes laws, produces statutes, reviews administrative rules, comments on initiated measures, and serves as a resource of legislative information for the public.

Legal Advice

- The Office of Legislative Legal Services is only authorized to provide legal advice to the state legislature.

- Talking with this group does not create an attorney-client relationship between my office and this group.

- Any information I give you is not intended to serve as legal advice relating to the task you have in reviewing this severance tax credit.

The Taxpayer's Bill of Rights (TABOR) passed at the 1992 general election.

Article X, Section 20 of the Colorado Constitution.

TABOR requires prior voter approval for any:

- new tax
- tax rate increase
- mill levy above that for the prior year
- valuation for assessment ratio increase for a property class
- extension of an expiring tax, or
- tax policy changes directly causing a net tax revenue gain to any district

Colo. Const. art. X, § 20 (4) (a)

Tax Policy Change Directly Affecting a Net Tax Revenue Gain

- Phrase not defined in the constitution.
- Some tax policy changes subject to voter approval are easier to identify than others.
  - Creation of a sales tax exemption does not require voter approval since it does not result in a net revenue gain.
  - However, the repeal of a sales tax exemption appears to require voter approval since such repeal would result in increased revenues.

A bill may contain several related tax policy changes – some that would cause a revenue gain and some that would cause a revenue reduction.

The Colorado Attorney General has issued an opinion that, in such case, a good faith fiscal analysis of the changes is required and that voter approval would not be required if a revenue gain caused by a particular tax policy change is offset by a reduction due to another related change.

Attorney General Opinion 96-1, dated Feb. 27, 1996.

Office of Legislative Legal Services' test regarding tax policy changes

Step 1

Determine if any tax law is being changed in a manner that modifies or affects tax policy.

Thoughts on Step 1

Is a statute relating to the imposition of a pecuniary charge for the purpose of defraying general governmental expenses of the state or of any local government being created, repealed, or amended in a manner that results in a modification of the standards or rules governing the imposition of the charge?

Tax policy changes include changes affecting what tax is imposed on, when tax is imposed, and how tax liability is determined. For example, the establishment or elimination of tax exemptions or credits and changes to the calculation of taxable income are tax policy changes.

If the answer to Step 1 is YES, a tax policy is being changed and the analysis should proceed to Step 2.

Step 2

Determine if the tax policy change directly causes a net tax revenue gain to the state or to any local government.

This determination is obviously influenced by the fiscal impact of any legislation that this group recommends to the General Assembly. The fiscal impact will be established by the fiscal notes staff of Legislative Council.

Thoughts on Step 2

Does the change in tax policy have the effect of a tax increase as evidenced by the state or any local government collecting an amount of tax revenues that exceeds any tax revenues lost due to the tax policy change and that would not have been collected without the tax policy change?

More thoughts on Step 2

- It should be assumed that all other factors that may affect the amount of tax revenues collected remain constant, absent any reliable information to the contrary;
- The best information available at the time the tax policy change is being considered should be used;

More thoughts on Step 2

- A tax policy change has the effect of a tax increase if the tax policy change has the same or a similar effect as the other actions relating to taxes that require voter approval under article X, section 20 (4) (a) [new tax, tax rate increase, mill levy increase, valuation for assessment increase, or extension of expiring tax];

More thoughts on Step 2

- Tax revenues directly caused by a tax policy change are all tax revenues in excess of the amount of tax revenues that would otherwise be collected without the tax policy change;

More thoughts on Step 2

- It should be noted that statutory changes involving disparate subject matters *may* constitute distinct tax policy changes requiring separate determinations as to whether each tax policy change directly causes a net tax revenue gain.

If the answer to Step 2 is "YES", the tax policy change directly causes a net tax revenue gain to the state or any local government, and voter approval is required.

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